HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION No.17922 of 2007

Date: 30-08-2007.

Between :

M/s.Venus Technologies, Nacharam, rep. by its Partner.

.....Petitioner

And

The Appellate Deputy Commissioner (CT), Hyderabad Rural Division, Nampally, Hyderabad.

.....Respondent.

HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S. ANANDA REDDY

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ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

This is a writ petition, challenging the order of the Tribunal passed in Tribunal Appeal No.570 of 2006 on 28th of March 2007. The learned Government Pleader submits that he has instructions in the matter and the case can be heard and decided even in the absence of counter affidavit.

The only ground agitated before this Court to challenge the impugned order is that in terms of Section 19 of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act'), it is not necessary for an assessee to deposit 12.5% of the disputed tax and also the admitted tax, before he could file an appeal, if the appeal is filed within a period of thirty days from the date of the order against which the appeal is filed. It is contended by the learned counsel for petitioner that the restriction of depositing 12.5% of the disputed tax and also the admitted tax is only in those appeals where the appeals

are filed after the prescribed period of thirty days. The argument, on the face of it, looks absurd, because, the power to extend the time to file appeal is given to the appellate authority, as is evident from the provision itself. Had the condition been there that the appeals beyond time would be admitted only if the admitted tax and 12.5% of the disputed tax is paid, then, there would have been no power given to the assessing authority to condone or refuse condonation of delay. It is well settled that nobody can file an appeal unless a right of appeal is available by a Statute. It is also settled that right of appeal shall be exercised in the way in which it is provided by the Statute.

Section 19 of the Act deals with appeals and any dealer objecting to any order passed or proceeding recorded by any authority, can file an appeal within thirty days from the date on which the order or proceeding was served on him. There are two provisos to this right of appeal. One of the provisos is that the appeal could be entertained beyond thirty days also, if the appellate authority was satisfied that the dealer had sufficient cause for not preferring the appeal within thirty days. Therefore, it is manifestly clear that appeals beyond thirty days are not maintainable at all. They would be maintainable in exceptional cases, where the appellate authority is satisfied that the dealer had sufficient cause for not preferring the appeal within the period prescribed. Condoning the delay or refusing to condone the delay, are

nothing to do with payment of admitted or the disputed tax, in accordance with the 2nd proviso. Second proviso to Section 19 states—

> "Provided further that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces proof of payment of tax admitted to be due, or of such instalments as have been granted, and the proof of payment of twelve and half percent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant, for the relevant assessment year, in respect of which the appeal is preferred."

The first proviso and the second proviso deal in altogether two different situations. First proviso relates to the condonation of delay, whereas the second proviso lays down the conditions for entertaining the appeal. In this view of the matter, we do not find there is any scope for interference in the matter. The writ petition is misconceived and it is accordingly dismissed.

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BILAL NAZKI, J

30th August 2007.

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S. ANANDA REDDY, J

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